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9 *Attorney for Defendant Ismael Ortiz, Jr.*

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON  
12

13 UNITED STATES OF AMERICA,	)	
	)	No. 2:21-CR-00043-TOR-3
14 Plaintiff,	)	
	)	<b>DEFENDANT ORTIZ'S</b>
15 vs.	)	<b>SENTENCING</b>
	)	<b>MEMORANDUM</b>
16 ISMAEL ORTIZ, JR.,	)	
	)	
17 Defendant.	)	
	)	
18	)	
19	)	
20	)	
21	)	
22	)	
23	)	

24 Defendant Ismael Ortiz, Jr. ("Mr. Ortiz"), by and through his  
25 attorney of record, Ronald A. Van Wert of Etter, McMahon, Lamberson,  
26 Van Wert & Oreskovich, P.C., hereby respectfully submits his  
27 Sentencing Memorandum per the Court's *Order Accepting Guilty Plea*  
28 *and Setting Sentencing Schedule* ("Order") [ECF 436].  
29  
30  
31  
32

1 Mr. Ortiz has entered into an 11(c)(1)(C) plea of guilty to one count  
 2  
 3 of conspiracy to distribute 50 grams of actual (pure) methamphetamine.  
 4  
 5 For the reasons stated herein and at the time of sentencing, Mr. Ortiz  
 6 respectfully requests that the Court sentence Mr. Ortiz to no more than  
 7 the mandatory minimum of 10 years, which is “sufficient, but not greater  
 8 than necessary, to accomplish the objectives of 18 U.S.C. § 3553(a).”  
 9

10  
 11 **I. 18 U.S.C. § 3553(a)**  
 12

13 In accordance with the United States Supreme Court’s decision in  
 14 *U.S. v. Booker*, 543 U.S. 220 (2005), when sentencing a defendant, the  
 15 sentencing court must consider the factors listed in 18 U.S.C. § 3553(a).  
 16  
 17 Section 3553(a) provides, in pertinent part:  
 18

19  
 20 The court shall impose a sentence sufficient but not  
 21 greater than necessary to comply with the purposes  
 22 set forth in paragraph (2) of this subsection. The  
 23 court, in determining the particular sentence to be  
 24 imposed, shall consider

- 25 (1) the nature and circumstances of the offense  
 26 and the history and characteristics of the defendant;  
 27 (2) the need for the sentence imposed—  
 28 a. to reflect the seriousness of the offense, to  
 29 promote respect for the law, and to provide  
 30 just punishment for the offense;  
 31 b. to afford adequate deterrence to criminal  
 32 conduct;  
 c. to protect the public from further crimes of

- 1 the defendant; and  
 2 d. to provide the defendant with needed  
 3 educational or vocational training, medical  
 4 care, or other correctional treatment in the  
 5 most effective manner;  
 6 (3) the kinds of sentences available...

7 (Emphasis added.)

8 Although the sentencing court must also consider the sentencing  
 9 guidelines, it must not give more weight to the sentencing guidelines  
 10 than to § 3553(a). *U.S. v. Zavala*, 443 F.3d 1165, 1169 (9<sup>th</sup> Cir. 2006).  
 11 Moreover, if the sentencing court treats a guidelines range as the  
 12 presumptive sentence, the court “will commit legal error by misapplying  
 13 § 3553(a).” *Id.* at 1170.  
 14

15 The sentencing court’s “task is to attempt to find the most  
 16 reasonable sentence for [the particular defendant] within the territory of  
 17 all possible reasonable sentences.” *Id.* Sentencing is not mechanical, but  
 18 rather a “difficult art.” *U.S. v. Diaz-Argueta*, 447 F.3d 1167, 1172 (9<sup>th</sup>  
 19 Cir. 2006). It is “an act of reason as the judge looking at this particular  
 20 person and the circumstances of the crime that this particular person has  
 21 committed makes a judgment following the prescriptions of [§ 3553(a)].”  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31  
 32  
*Id.*

1           **a. Nature and circumstances of the offense and the history**  
 2           **and characteristics of the defendant**

3  
 4           Notably, Mr. Ortiz's most recent history consists of becoming a  
 5 father and staying in compliance with release conditions for over 1 ½  
 6 years leading to his arrest upon pleading guilty to the current offense. At  
 7 32 years old, Mr. Ortiz has achieved a level of maturity and responsibility  
 8 that he was lacking during his formative years of adolescence. Those  
 9 years were marked by instability in his home, including mental health  
 10 issues, alcoholism, and emotional abuse. To cope, Mr. Ortiz turned to  
 11 substance abuse—alcohol in particular—and gang activity. Mr. Ortiz's  
 12 criminal history prior to reaching 21 years old reflects these destructive  
 13 influences.  
 14  
 15  
 16  
 17  
 18  
 19

20           Attachment A hereto is a letter written by Mr. Ortiz in which he  
 21 breaks down his criminal history, acknowledges his culpability, and  
 22 expresses his commitment to improve himself for the sake of his child  
 23 and himself. Mr. Ortiz has demonstrated an ability to succeed in  
 24 endeavors to advance himself lawfully in society, including obtaining his  
 25 GED, completing a course in automotive technology, and obtaining his  
 26  
 27  
 28  
 29  
 30  
 31  
 32

1 commercial driver's license. Mr. Ortiz intends to continue to learn trades  
2 while incarcerated.

3  
4 Mr. Ortiz further recognizes his struggles with alcoholism and  
5 anxiety. Mr. Ortiz hopes to have an opportunity to participate in  
6 programs while incarcerated to address those disorders. Mr. Ortiz  
7 respectfully requests that the Court recommend him for a mental health  
8 assessment and the RDAP program.

9  
10 Mr. Ortiz will be over 40 years old when he is released from prison.  
11 The likelihood of recidivism decreases with age. Imprisonment for more  
12 than ten years is more than what is necessary to achieve the objectives of  
13 18 U.S.C. § 3553(a).

14  
15 **b. Time period will appropriately punish, deter, and protect**

16 In the year and a half leading up to his arrest at the change of plea  
17 hearing, Mr. Ortiz was able to demonstrate a level of compliance that was  
18 marked by a reduction in release conditions. Mr. Ortiz thereby  
19 established that he does not pose a threat to the community. Also, unlike  
20 co-defendants Crittenden, Garcia, and Santacruz, Mr. Ortiz was not  
21 found in the possession of or associated with firearms, or assessed an

1 enhancement for threats or use of violence. Ten years of imprisonment is  
2  
3 more than necessary to protect the community.

4 A review of Mr. Ortiz's criminal history shows that this is his first  
5  
6 drug offense. Although ten years is the mandatory minimum, it sits right  
7  
8 about the middle of his otherwise applicable guideline range of 108 to  
9  
10 135 years. Accordingly, Mr. Ortiz will not fall at the low end of his  
11  
12 applicable guideline range. The information provided in the PSIR and  
13  
14 herein as well as that presented at sentencing challenges the soundness of  
15  
16 mandatory minimums and would justify a sentence below the guideline  
17  
18 range. Accordingly, ten years is sufficient punishment for Mr. Ortiz.

19 Maturity and fatherhood provide the largest deterrents to recidivism  
20  
21 for Mr. Ortiz. Moreover, Mr. Ortiz has demonstrated his ability to  
22  
23 remain law abiding via his compliance for 1 ½ years on release.  
24  
25 Furthermore, Mr. Ortiz intends to counsel younger inmates to learn from  
26  
27 his mistakes. Thus, Mr. Ortiz will be working to deter others from  
28  
29 reoffending.

30 Attachment B hereto is a letter of reference from a fellow church  
31  
32 member, Roy Serrato, attesting to Mr. Ortiz's character and reflecting a  
network of support for Mr. Ortiz. Attachment C is a letter from Mr.

1 Ortiz's cousin, Joe Hernandez, from Oregon who requests that Mr. Ortiz  
 2  
 3 be housed in Sheridan, Oregon where he would have the support of  
 4  
 5 family, including Mr. Hernandez and his sister, Priscilla Lowells. Mr.  
 6  
 7 Hernandez notes the positive effect of personal visitation on reducing  
 8  
 9 recidivism. For the foregoing reasons, more time will not have an  
 10  
 11 additive effect on deterrence and, therefore, would be contrary to the  
 12  
 13 objectives of 18 U.S.C. § 3553(a).

14 For the reasons stated above and the record before the Court,  
 15  
 16 including the presentation at the forthcoming sentencing hearing, ten  
 17  
 18 years—the mandatory minimum and mid-point of the applicable  
 19  
 20 sentencing range—is sufficient, but not greater than necessary, to  
 21  
 22 accomplish the objectives of 18 U.S.C. § 3553(a). Accordingly, Mr.  
 23  
 24 Ortiz respectfully requests that the Court sentence him to ten years  
 25  
 26 imprisonment.

27 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of July 2023.

28 ETTER, McMAHON, LAMBERSON,  
 29 VAN WERT & ORESKOVICH, P.C.

30 By: /s/ Ronald A. Van Wert

31 RONALD A. VAN WERT, WSBA #32050  
 32 Attorney for Defendant Ismael Ortiz

CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of July 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all counsel of record in this matter registered with the CM/ECF System.

/s/ RONALD A. VAN WERT

RONALD A. VAN WERT, WSBA 32050

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